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2. The President therefore had a right *jure belli* to institute a blockade of ports in possession of the States in rebellion, which neutrals are bound to regard. *Id.*

3. Under the Constitution of this government, although the citizens owe supreme allegiance to the Federal Government they owe also a qualified allegiance to the State in which they are domiciled; their persons and property are subject to its laws. *Id.*

4. Hence in organizing this rebellion they have acted as States claiming to be sovereign over all persons and property within their respective limits, and asserting a right to absolve their citizens from their allegiance to the Federal Government. The ports and territory of these States are held in hostility to the General Government, and all persons residing in

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7. A citizen may be forbidden by a *municipal* law to do what would be lawful for a neutral to do on the high seas. *Id.*

8. A sale of contraband property to a belligerent in a neutral territory is a violation of neutrality, and, *à fortiori*, such sale in one belligerent country by a citizen or domiciled person thereof, is a breach of alliance. *Id.*

9. Hence the Act of July 13th 1861, prohibits every act done towards the execution of a design to carry on, without a "permit," commercial intercourse between the interdicted and other states, and it is violated not only when a vessel has actually sailed with the goods on board, but the moment the goods are started, even on land, towards the forbidden destination. The application for a "permit" is evidence of the intention to proceed, and the use of fraudulent invoices to procure the "permit," shows the intention to be fraudulent. The shipment of goods under color of that permit, is a step taken in execution of that fraudulent intent—is an overt act. Such goods are "*proceeding to*" the interdicted port within the meaning of the Act of July 13th 1861, and the shipper, under the Act of May 20th 1862, is guilty of an "*attempt*" to transport them in violation of law. *Id.*

10. The condition of peace or war, public or civil, in a legal sense, must be determined by the political department of the Government, and the Courts are bound by that decision. *Id.*

11. By the Act of July 13th 1861, the prohibition of commercial intercourse is to be in force "so long as such condition of hostility shall continue." The same power which determines the existence of war or insurrection, must also decide when "the condition of hostility" ceases. In a legal sense the state of war or peace is not a question *in pais* for Courts to determine. It is a legal fact ascertainable only from the decision of the political department. *Id.*

12. Hence, when the President has proclaimed a State to be in insurrection, the Courts must hold that this condition continues until he decides to the contrary. *Id.*

13. The same rules apply as to the exceptions from the interdict, of such parts of the insurrectionary States "as may maintain a loyal adhesion to the Union and the Constitution, or may be from time to time occupied and controlled by forces of the United States engaged in the dispersion of said insurgents." Such exceptions, and the legal status of such parts of the said States, are to be determined by the President. *Id.*

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that decision, securities of a like nature, issued before the passage of the act in question, and owned by a resident of the State, are not exempt from taxation under State laws, if no unfriendly discrimination to the United States, as borrowers, is applied by the State law; and property in United States stock is subjected to no greater burdens than property in general. *People vs. Commissioners of Taxes*, 31

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24. The 43d section of the election law of 2d July, 1839, allowing soldiers to vote outside of the boundaries of the State, is in direct conflict with the 3d article of the Constitution of Pennsylvania, and is, therefore, null and void. *Id.*

25. The Constitution of Connecticut provides for the time of holding the annual election. And it also provides the place, viz., in an "electors' meeting" composed of the electors in the several towns, duly warned, convened, organized and held for that purpose. These provisions, with other incidental and accessory provisions in the same instrument, leave no room for doubt, that any act of the legislature authorizing the votes of electors to be taken at any other place, or in any other manner, does conflict with the explicit and unequivocal provisions of the Constitution, and is therefore void. *Opinion of Supreme Court, &c.*, 460

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3. This is not the case where one person desires to be placed in an office now filled by another, for in such cases *mandamus* will not lie. It is more analogous to a demand for the books and papers belonging to an office, or for the insignia of office, for which this is the proper remedy. *Id.*
4. The office of canvassers is merely ministerial, and as such will be controlled by the Court under this process. They are required by statute to count all the votes formally certified to them. And the fact that some of the judges of elections do not appear to have been properly sworn, is no objection to the validity of their returns. The certificate of an officer *de facto* is all that is required. *Id.*
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11. Where promise is made with condition to be void on certain contingency, the burden of proof is on the maker to show the avoidance. *Thayer vs. Connor*, . . . 444
12. Effect of conditional signing where the condition is broken, discussed in *Note to Seely vs. People*, . . . 346

VI. *Contracts void on account of Public Policy.*

13. A compromise of private injury is binding, hence a promise to pay for withdrawing opposition to a road through plaintiff's land is valid. *Weeks vs. Lippencott*, . . . 505

VII. *Parol Evidence in relation to Written Contracts.*

14. A written contract governs the right of the parties to it, and cannot be varied, added to, or qualified; with one exception, that in some cases the custom of a trade may be annexed as incident to the contract; that is, not where the custom contradicts the contract, but where it is consistent with it. *Arbon vs. Fussell*, . . . 99
15. Admission of parol evidence to explain written. *Bidwell vs. North Western Ins. Co.*, . . . 59

CONTRACTOR.

1. A mere contractor on a public work is not liable to a third person for damages occasioned by the non-performance of his contract. *Fish et al. vs. Dodge*, . . . 507
2. Nor is there any liability on part of the contracting board or of the State. *Id.*

CORPORATION.

- See ASSUMPSIT, 3.
BANKING, 6.

CORPORATION.

CITIZEN, 1.
 COURTS, 3.
 EMINENT DOMAIN, 1.
 NEGOTIABLE BONDS.
 RAILROADS.
 RELIGIOUS SOCIETIES.

I. *Evidence of Existence and Acts.*

1. *Primâ facie* evidence of its existence. Indorsement of notes by—
 evidence in action by indorsee. *Topping vs. Bickford*, . . . 181
2. An assignment made by president and secretary, with the seal of
 the corporation attached, but without specific authority from the com-
 pany, is not valid. *Id.*

II. *Liability of Subscribers to Stock.*

3. Action by corporation will lie on a subscription paper signed before
 the incorporation, without formal assignment from the committee who
 received the signature. *Dansville Seminary vs. Welch*, . . . 629
4. Subscriber is liable for his subscription though he has assigned his
 interest. *Dayton vs. Borst*, . . . 563

III. *Directors and Stockholders.*

5. The relation of directors to stockholders is that of trustee to cestui
 que trust, and they are liable to individual stockholders for fraudulent
 or careless expenditure of the money of the corporation. *Butts vs. Wood*, 628
6. Stockholder cannot maintain a bill in equity to restrain the com-
 pany from engaging in a new enterprise, if it is sanctioned by legislative
 grant and by a vote of the majority of stockholders. *Durfee vs. Old
 Colony, &c., Railroad Co.*, . . . 700
7. Where the charter vested the powers, &c., of the company in a board
 of forty directors, and afterwards an Act of Legislature authorized the
 company to reduce the number to twenty-one, *held*, in the absence of
 provision in the Act requiring the reduction to be made by stockholders,
 that the power vested in the board of directors. *Matter of Excelsior Ins.
 Co.*, . . . 632

IV. *Priority of Creditors.*

8. Priority among creditors of president and of the corporation, when
 the latter was organized for fraudulent purposes. *Booth vs. Bunce et al.*, 120

V. *Jurisdiction of Equity over Foreign Corporation.*

9. A Court of Equity has jurisdiction to take charge of the property of
 a foreign corporation, to preserve it for creditors. *Murray vs. Vanderbilt*, 765
10. An appearance by officers of the Court will be valid and give juris-
 diction, whether the service upon the officers be good or not. *Id.*

COUNSEL.

See CORPORATION, 10.

1. AUTHORITY OF, . . . 689
2. A promise by a client to pay money to a counsel for his advocacy,
 whether made before, or during, or after the litigation, has no binding
 effect. *Kennedy vs. Brown and Wife*, . . . 357
3. The relation of counsel and client renders the parties mutually inca-
 pable of making any legal contract of hiring and service concerning
 advocacy in litigation. *Id.*
4. A barrister became the advocate of the female defendant, and
 during the continuation of the litigation she made repeated requests to
 him for exertions as such, and repeatedly promised to remunerate him
 for the same; and after the end of the litigation she spoke of the amount

COUNSEL.

of this remuneration, and admitted the amount of debt due for such remuneration to be a certain sum, and promised to pay it: *Held*, that these facts did not constitute any obligation on the part of the defendant to pay. *Kennedy vs. Broun*, 357

COUNSEL FEES.

1. Are recoverable upon a bond for payment of costs and damages. *Corcoran vs. Judson*, 251

COUNTY COMMISSIONERS.

1. Facts certified by are not traversable on *certiorari*. *Mendon vs. Commissioners of Worcester*, 445
2. Nor will their proceedings be reversed for technical inaccuracy. *Id.*

COURTS.

See CORPORATIONS, 9-10.
JUDGMENT, 4.

I. *Jurisdiction of Federal Courts.*

1. An action was commenced in the Supreme Court of New York by A., a resident of that State, against B., a foreign corporation located in Massachusetts. The cause of action was a breach of implied contract, in neglecting to protest certain drafts forwarded to B. by C., a banking corporation located in the State of Ohio. The cause of action was assigned by the Ohio Bank to the plaintiff. The action was commenced by summons, which was served by publication, and a warrant of attachment was afterwards issued by which the defendants' property in New York was attached under the provisions of the code of procedure applicable to foreign corporations. The defendants entered an appearance in the State Court, and obtained an order removing the case to the U. S. Circuit Court under the 11th section of the Judiciary Act of 1789. On an application to remand the case to the State Court for want of jurisdiction: *Held*, that the State proceeding is substantially one of foreign attachment, and that it is a "suit" within the meaning of the 11th section. *Barney vs. The Globe Bank*, 221

2. The validity of the removal is to be tested by the 12th section. The objection that the defendant is not an inhabitant nor found in the district at the time of serving the writ, cannot avail the plaintiff in a case where the defendant has appeared in the State Court and removed the cause to a Circuit Court of the United States. There is no distinction in principle between the case where the defendant, having removed the cause to the Circuit Court, moves to have it remanded for want of jurisdiction (*Sayles vs. North Western Ins. Co.*, 2 Curtis C. C. 212), and the case where a plaintiff makes a similar application. *Id.*

3. A corporation is a "citizen" within the meaning of both these sections. *Id.*

4. That clause of the 11th section which provides that no District or Circuit Court "shall have cognisance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such Court to recover said contents if no such assignment had been made," has no application to a case like the present. This is not a suit to recover the "contents" of a chose in action within the meaning of the Act. Only those choses in action are included within the term "contents" which are founded on a contract containing within itself some promise or duty to be performed. When the suit is founded on a mere right of action to recover damages imposed by law for a delinquency, the clause has no application, and the assignee may bring an action in this Court if the other conditions required by the Judiciary Act exist. *Id.*

5. The attachment issued under the State process will hold the goods

COURTS.

attached until the final judgment in this Court. The words "original process," as used in the 12th section, include any *mesne* process issuing out of the State Court by which the property is seized before the case is removed into this Court. *Barney vs. The Globe Bank*, 221

6. The Federal Courts have jurisdiction and power to issue the writ of *mandamus* to a municipal corporation to compel it to perform its duty, although such duty is created and enjoined by state law alone. *United States ex rel. Learned vs. Burlington*, 394

II. Jurisdiction of State Courts.

See DRAFT, 2, 3.

7. Where on a return to a writ of *habeas corpus*, a State Court is *judicially apprised* that the party is in custody under the authority of the United States, such Court can proceed no further. The prisoner is then within the dominion and exclusive jurisdiction of the United States. *In re Jordan*, 749

8. Under the second section of chapter 25 of the Laws of Congress of 1862, it is declared that "hereafter no person under the age of eighteen years shall be mustered into the United States service, and the oath of enlistment taken by the recruit shall be conclusive as to his age." The prisoner having been mustered into the United States service, and having, at the time of enlistment, made a declaration under oath that he was twenty-one years of age, and these facts having been stated in the return to the writ of *habeas corpus* by the party claiming to hold him in custody under color of the authority of the United States: *Held*, that the state Judge was "judicially apprised" that the prisoner was in custody under the authority of the United States, and that he was ousted of his jurisdiction. *Id.*

9. The case of *Ableman vs. Booth*, 21 How. U. S. 506, approved and followed. *Id.*

10. The Supreme Court of Pennsylvania has jurisdiction to review and correct the proceedings of inferior Courts, except where it is expressly excluded by statute, or in a case stated by the parties, wherein they agree to submit their disputes to auditors or referees without expressly reserving their right to a writ of error. *Chase vs. Miller*, 146

11. This Court has jurisdiction of a contested election, on *certiorari*, where it appears from the record that no facts were in dispute; hence the rulings of the Court below upon questions of law purely are reviewable here. *Id.*

12. This Court is as much bound to take cognisance of questions involving the constitutionality of the election laws, even though they may be raised in a contested election, as they are to pass upon the constitutionality of an Act of Assembly relating to any other subject, as long as the Legislature does not take away that jurisdiction. *Id.*

13. The 155th section of the Act of 2d July, 1839, giving to Courts of Quarter Sessions the same powers that are conferred on committees of the Legislature, to compel the attendance of witnesses and the production of papers in contested elections, is only a grant of power for the specific purposes named, and does not make the decision of the Court below, like that of the Legislature, final and conclusive. *Id.*

14. Bills of exceptions are not allowed in the Courts of Quarter Sessions, therefore no question which arises outside of the record can be reviewed by this Court. *Id.*

15. A statute directing a Court to determine a case "at the next term," does not prohibit such Court to determine it after the expiration of the term, if the words of the statute are affirmative only. Such a statute is merely directory, and negative words are necessary to oust the jurisdiction of the Court when it has once attached. *Stevenson vs. Lawrence*, 409

COVENANT.

See EASEMENT, 3.

1. FOR TITLE RUNNING WITH THE LAND, 193, 257
2. No covenant can be implied in conveyance of real estate in New York. *Sandford vs. Travers*, 566
3. Covenant by executors against their own acts does not contain a covenant as to the estate of their testator. *Id.*

CRIMINAL LAW.

See PARDON.

I. *Power to discharge Jury.*

1. Verdict after discharge. *Com. vs. Townsend*, 768

II. *Compounding Felony.*

2. Agreement to. *Porter vs. Havens et al.*, 316

III. *False Pretences.*

3. *State vs. Tomlin*, 52
4. Requisite averment. *Com. vs. Goddard*, 181

IV. *Larceny.*

5. One who, in expectation of a reward, withholds from the owner, whom he knows, a lost check received by him from the finder, is not guilty of stealing the check. *Regina vs. Gardner*, 178

V. *Murder.*

6. A statute of New York of 1860 was held by the Court of Appeals, on the one hand, to have repealed absolutely all previous statutes providing for the punishment of murder, and on the other, to be itself unconstitutional in establishing a new mode of punishment, so far as it applied to crimes committed before its passage. A judgment on a conviction, under an indictment found after the passage of the act, for a murder committed before, was for this reason reversed in the Supreme Court, but there was no error in the trial or conviction itself. *Held*, that the Court was bound thereupon to discharge the prisoner, and could not direct a new trial. *Kuchler vs. The People*, 43

7. The statute in regard to writs of error in criminal cases, only authorizes a new trial on reversal of the judgment, where the error is of a character which renders the trial and conviction illegal, so that the prisoner cannot legally be said to have been in jeopardy. *Id.*

8. Evidence in capital cases—exception to decisions and charge of the Court on the trial. *Commonwealth vs. Dower*, 182

CUSTOM.

See CONTRACT, 7.

1. The custom of the lake ports, that on the failure of the consignees to provide for the delivery of the property consigned to them for twenty-four hours after the report of its arrival, the master of the vessel was entitled to store the freight subject to charges at the nearest port, would not be a reasonable custom at Port Colborne, where there was no facility for the discharge of the cargo except at one place, and there was some proof of the custom of the port for vessels to wait their turn at that place. *Strong vs. Carrington et al.*, 287
2. May be proved, to explain contracts. *Note to Strong vs. Carrington*, 300
3. In violation of good morals, cannot be given in evidence. *Holmes et al. vs. Johnson*, 503

DAMAGES.

1. Person in possession of land under contract to purchase may maintain action for injury to his interest. *Honsee v. Hammond*, . . . 764

DEBTOR.

See CORPORATIONS, 8, 9.

DEEDS OF TRUST.

TRUSTS AND TRUSTEES, 2.

1. Cannot volunteer protection to claims of third persons with whom he has no dealings, to avoid liability on his own contracts. *Lund vs. Seamen's Bank, &c.* 125

DECEDENT.

1. Right to disposition of body of decedent after burial belongs to next of kin, not to the widow. *Wynkoop vs. Wynkoop*, 503
2. Where the domicile of testator and all his personal property are in New York, the executors cannot be allowed expenses of proving will in another State where testator had real estate only. *Young vs. Brush et al.*, 632
3. The distribution of the personal estate in such case is to be according to the laws of New York. *Id.*
4. Sale of lands by administrators and guardians as against infant heirs. *Gibson vs. Roll*, 118

DEED.

1. President of corporation not liable on bond signed in his official capacity. *Ellis vs. Pulsifer*, 182
2. Deed absolute on its face will be held a mortgage, if it appear to be only intended as security. *Steel vs. Steel*, 254
3. Memorandum of alterations, &c., should be recorded, and the Judge may charge that absence of such memorandum on the record is a circumstance for their consideration where fraud is alleged. *Heyer vs. Heyer*, 439

DEEDS OF TRUST TO SECURE DEBTS, SALES AND TITLES UNDER, 641, 705

DISCIPLINE OF THE BAR, 691

DOG.

1. Liability of owner for injuries by. *Munn vs. Reed*, 254

DOMICIL.

1. A domicile once acquired continues till a new one is gained. While in transit the old domicile remains. *Littlefield vs. Brooks*, 735
2. An inhabitant of A. on 30th March leaves that place with the intention of residing in C.; on 1st April he arrives at B. and the next day reaches C., where he establishes his residence. It was held, that for the purposes of taxation he was to be deemed an inhabitant of A. on 1st April, and was liable to taxation *there*. *Id.*

DRAFT.

I *Misspelling of Name.*

1. One *Spangler* was properly enrolled among the militia, from whom a draft was to be made. By mistake the name was written *Spangle* on the ballot put into the box from which the quota was to be drawn. This ballot being among those drawn, the Court were of opinion that the draft was not vitiated by the error in the name. *In the Matter of Spangler*, . . . 598
2. Where one person is held in custody by another, acting in the right of and under the authority of the General Government, or claiming in good faith and under color of such authority to be so acting, the State

DRAFT.

Courts have no jurisdiction to inquire into the validity of such authority, and to discharge the person so held from custody. *In the Matter of Spangler*, . 598

3. Where a draft was made under a law of Congress, but under the direction of the Governor of the State, and by Draft Commissioners appointed by him, it was held that the persons drafted and in custody of the Draft Commissioners, were held under national authority, and that the State Courts had no jurisdiction to inquire into the validity of the draft on *habeas corpus*. *Id.*

II. *Tax by Municipal Corporation to exempt its Citizens.*

4. Under the Act of Congress of March 3d, 1863, ch. 73, for enrolling and calling out the National forces, the duty of service by the person drafted, or of the procuration of a substitute or payment of commutation in lieu thereof, is strictly a private, *personal liability*; and a municipal corporation has no power under the Constitution and laws of Maine to levy a tax on the public to discharge such liability. *Opinion, &c.* . 621

DWELLING-HOUSE.

See EMINENT DOMAIN, 1, 2.

EASEMENT.

See EJECTMENT, 1, 2.

PARTY-WALL, 1.

1. RECIPROCAL, 449
2. LOSS BY ABANDONMENT, 513
3. Where tenants in common lay out a lot as a street and covenant not to build within eight feet of it, each acquires a negative easement in the lands of all. *Greene vs. Creighton*, 382

EJECTMENT.

1. Cannot be maintained against a municipal corporation by proof of use of the property as a public street—such use is only evidence of claim of a right of way. *Cowenhoven vs. Brooklyn*, 506
2. Will not lie for an easement of flowing the land with water. *Wilk-low vs. Lane*, 247
3. Lease after lessor has conveyed all his interest may be foundation of title, if followed by actual adverse possession. *Id.*

ELECTION DISTRICT.

See CONSTITUTIONAL LAW, 21.

ELECTION OF REMEDIES.

1. *Bank of Beloit vs. Beale*, 564

EMINENT DOMAIN.

1. It is provided by § 5, c. 81, of R. S. of 1840, that in locating railroads, "no corporation shall take any meeting-house, dwelling-house, or public or private burying-ground, without the consent of the owners thereof." *Held*, that the term dwelling-house, as here used, means only the house, and includes no part of the garden, orchard, or curtilage. *Wells vs. Somerset, &c., Railroad Co.*, 658
2. The right of eminent domain confers upon the Legislature authority to take private property for public uses, when the public exigencies require it, subject only to that provision of our Constitution which exacts just compensation; and a dwelling-house is no more exempt than any other species of real estate, when the Legislature, in the exercise of that right, determines that the public exigencies require it. *Id.*

ENTRY.

1. Reservation of right by deed. *Valentine vs. Central Railroad Co.*, . 55

EQUITABLE ASSIGNMENTS OF FUTURE ACQUISITIONS, . 527

EQUITY.

See JUDGMENT, 7.

MORTGAGE, 2, 16-18.

1. Party desiring relief on ground of mistake must offer to rescind. *Sandford vs. Travers*, . 566
2. Bill will not lie to compel reconveyance by grantee in deed fraudulently obtained before delivery. *Pratt vs. Pond et al.*, . 509
3. Bill will lie to compel mortgagor to deliver up mortgage intrusted to him to have recorded. *Pierce vs. Lawson*, . 509
4. Bill to quiet title by one not in possession dismissed. *Blackwood vs. Van Vliet*, . 571

ERROR.

1. If the points of plaintiff in error were answered by Court below with sufficient distinctness in connection with the general charge, there is no ground for reversal. *Pierce vs. Cloud*, . 446
2. Where the evidence seemed equally balanced, the presumption is that the Court below carried out the intention of the testator. *Wagner's Appeal*, . 634

ESTATE ON CONDITION.

1. Land granted for certain use, to revert to grantor if used for other purposes, does not revert until actual abandonment. *Penna. Railroad Co. vs. Parke et al.*, . 502

EVIDENCE.

See CORPORATION, 1.

GRANTOR, 2.

HUSBAND AND WIFE, 6.

1. It is competent to show by parol, the grounds on which a verdict or judgment was rendered, when the grounds become material and do not appear on the record. *White vs. Madison*, . 663
2. Where a number of articles are sold together, opinions of witnesses will not be received as to value of some in order to fix the value of others in action for the conversion of the latter. *Wells vs. Kelsey*, . 631
3. One who has voluntarily destroyed a written document cannot testify to its contents in an action by himself founded on it, without first negating the suspicion of fraud from his act. *Count Joannes vs. Bennett*, . 767
4. Unanswered letter from party offering it. *Fearing vs. Kimball*, . 64

EXECUTION.

See MORTGAGE, 23-24.

1. It is fraud in law to permit goods levied on to remain in possession of defendant and be sold by him as before, and such execution will be postponed to subsequent one. *Parys & Co.'s Appeal*, . 312
2. Attachment of lands in hands of apparent owner, but real mortgagee—unrecorded defeasance. *Columbia Bank vs. Jacobs*, . 126
3. Misdescription of land levied upon. *Steel vs. Steel*, . 254
4. Machines exempt from attachment in Massachusetts. *Daniels vs. Hayward*, . 446

EXECUTOR AND ADMINISTRATOR.

See DECEDENT, 2, 4.

EXECUTOR AND ADMINISTRATOR.

1. Sureties of administrator are liable on the bond, although he be improperly appointed, if he act under his appointment. *Shaller and Ebling's Appeal*, 634
2. Cannot be compelled by the heir to complete the purchase of real estate which his decedent had orally agreed to buy. *Gay et al. vs. Gay et al.*, 697
3. What expenses before the discovery of a will administrator may be allowed for. *Edwards vs. Ela*, 508
4. Objections to the granting of letters testamentary to, under New York statute. *McGregor vs. Buel*, 120
5. Issue of special letters of administration to a collector.—Remedy for refusal of Surrogate to do so. *Id.*

FACTOR.

See AGENT.

1. Evidence of title to protect the pledgee—New York Factors' Act. *Cartwright et al. vs. Wilmerding et al.*, 122

FALSE IMPRISONMENT.

1. Person arrested on void execution cannot recover damages for remaining on the prison limits under his void bond. *Fuller vs. Bowker*, . . . 571

FAMILY PICTURES.

See HOUSEHOLD FURNITURE, 3.

FOREIGN LAW.

See HUSBAND AND WIFE, 11.

FOREIGN MINISTERS.

See INTERNATIONAL LAW, 7.

FORGED SIGNATURE.

1. May be adopted—evidence of adoption. *Greenfield Bank vs. Crafts*, 379

FORNICATION AND BASTARDY.

1. The order of maintenance is part of the sentence, and cannot be made where defendant is pardoned before sentence. *Commonwealth vs. Ahl*, 633
2. Evidence in action against putative father. *Eddy vs. Gray*, . . . 253

FREIGHT.

See COMMON CARRIER, 4.

GOOD-WILL.

1. The defendant sold the good-will of his business to the plaintiff under a written agreement, one of the terms of which was as follows:—"That the defendant should not carry on, or assist in carrying on, a business such as is now carried on at 17 Lupus street, Pimlico, being a general drapery and hosiery business, within two miles of that place." The defendant afterwards went into the district for the purpose of collecting old debts, and being there was asked by some persons to supply them with goods, which he did: *Held*, in an action for breach of the agreement against the defendant for carrying on business within the prescribed limits, that in order to do so to such an extent as to be a breach of the contract, it was not necessary he should have either place of business or house within the district. *Brampton vs. Beddoes*, 375

GRANTOR AND GRANTEE.

1. Grant with condition to support the grantor and in case of failure

GRANTOR AND GRANTEE.

- the deed to be void, the condition is in the nature of a penalty, and failure to perform involves forfeiture. *Spaulding vs. Hallenbeck*, . 763
2. Admissions of a grantor held to be evidence as part of *res gestæ* against plaintiffs who were identified in interest. *Id.*

GUARDIAN AND WARD.

1. Guardian is liable for losses in consequence of disregard of his license to sell, and of careless and imprudent investments. *Harding vs. Larned*, . 252
2. The assent of the ward is immaterial. *Id.*
3. Commissions do not always cover every allowance that can be made to guardians. *Morgan vs. Morgan*, . 701
4. Where guardian's bond has been improperly marked "cancelled," it is not error for Orphans' Court to order the word "cancelled" to be stricken off. *Newcomer's Appeal*, . 633
5. The Court has no power to order a guardian's bond to be cancelled while the guardianship remains and its duties are unperformed. *Id.*
6. Change of ward's domicile. *Kirkland vs. Whately*, . 380

HABITUAL DRUNKARD.

1. Jurisdiction of New York Courts over. *Davis vs. Spencer*, . 59

HIGHWAY.

See ROADS.

HOUSEHOLD FURNITURE.

1. The term "household furniture," is understood to include everything which may contribute to the use or convenience of the householder, or the ornament of the house, such as plate, linen, china, pictures, &c. *M' Micken vs. M' Micken University*, . 489
2. Where a testator by his will bequeathed to A. "all his library and household furniture of every description, and any other personal property not thereafter specifically devised," and by a subsequent clause devised to B. "all his real estate and personal property, which he may acquire after the date of his will," and again to B. "all the rest and residue of his real and personal estate, not thereinbefore devised," *Held*, that a portrait of testator, painted after the making of the will, and at the time of his death still in possession of the artist in another city, passed to A. under the devise of "household furniture." *Id.*
3. By the law of Ohio "family pictures" are exempt from execution, but, per STORER, J., this exemption would not extend to the private gallery of a connoisseur nor to costly pictures the subjects of which are not connected with the family in whose possession they are found. *Id.*

HUSBAND AND WIFE.

See BILLS AND NOTES, 9.

I. *Alimony*.

1. Cases where it is allowed discussed in *Note to Le Barron vs. Le Barron*, . 220

II. *Divorce*.

2. The settled practice in the English Courts in divorce suits for impotence is, to require a medical examination. *Le Barron vs. Le Barron*, . 212
3. Impotence being made by statute a cause for nullifying a marriage, the Court have power to compel the defendant to submit to a medical examination, though the statute makes no provision for it. Whether in such case the Court have power to compel the defendant to answer interrogatories on oath—*quære*. *Id.*

HUSBAND AND WIFE.

4. It seems, that an application of the above principles would authorize the Court to order the payment of temporary alimony, though not provided for by statute. *Le Barron vs. Le Barron*, 212
5. Divorce for impotency—personal examination. *Note to Le Barron vs. Le Barron*, 219
6. Fraudulent divorce in another State no bar—decree of Court granting divorce not conclusive as to citizenship—evidence of the fraud. *Shannon vs. Shannon*, 180

III. *Dower*.

7. Where wife refuses to release after agreement by the husband to convey free of dower, compensation in damages may be decreed against him. *Park vs. Johnson*, 180
8. In lands in possession of husband under executory contract for purchase of them. *Lobdell vs. Hayes*, 63

IV. *Separate Estate of Wife*.

9. No particular form is necessary to make an estate for sole and separate use of the wife, but the words used must clearly express the intention to exclude the husband's curtesy. *Nightingale et al. vs. Hidden et al.*, 443
10. Where land is purchased by wife's means and improved by her separate funds, her separate title will prevail against a subsequent judgment-creditor of the husband, although the deed was by mistake made to the husband. *Damon vs. Hall and Wife*, 506
11. Rights of wife as creditor of husband under law of France where the marriage was contracted, continue and attach to his property where he abandons her and dies domiciled in the United States. *Bonati vs. Welsch*, 250
12. Liability of wife's property in husband's use, for his debts—assignment of goods by wife. *Sherman vs. Elder et al.*, 57
13. Wife not precluded by ante-nuptial agreement from claiming a distributive share of personal estate of husband. *Sullings vs. Richmond et al.*, 697
14. When co-defendant's wife may be a witness in New York—parol promise of husband to repay money borrowed of wife, and post-nuptial settlement in consideration thereof. *Scheffner vs. Reuter et al.*, 61

V. *Contracts and general Powers of Married Women*.

15. Bond is void even though the consideration was one that would support an action. *Keiper vs. Helfricker*, 504
16. Bond is absolutely void in Pennsylvania, and so is any judgment on it. *Steinman vs. Ewing*, 635
17. Cannot make agreement in writing for purchase of real estate on credit, and her possession is possession of the husband. She is therefore improperly joined in action for recovery of the premises. *Rose vs. Bell and Wife*, 560
18. Cannot in Michigan engage in general business so as to make the proceeds her own. *Glover vs. Alcott*, 696
19. Power of married woman to make a will. *Ryder vs. Hulse*, 250

INDIANS.

See CONFLICT OF LAWS, 3, 4.

INFANT.

See DECEDENTS' ESTATES, 4.

NEGLIGENCE, 20-21.

1. Proper care on the part of persons having charge of young infant. *Munn vs. Reed*, 254

INJUNCTION.

1. An action on the case will not lie for improperly causing a writ of injunction to be issued. The remedy is on the injunction bond. *Gorton vs. Brown*, . . . 540
2. The case of *Cox vs. Taylor's Administrators*, 10 B. Monroe 17, not recognised as authority. *Id.*
3. Remedy of person damaged by improper issue of, discussed. *Note to Gorton vs. Brown*, . . . 547
4. Want of jurisdiction in the Court over the subject-matter will not prevent defendant from recovering costs—and a defendant may have damages if he obey the injunction, though he was not served and entered no appearance. *Cumberland Coal Co. vs. Hoffman Coal Co.*, . . . 701

INSOLVENCY.

1. No bar to action by foreign corporation. *Producers' Bank vs. Farnum*, . . . 443

INSURANCE.

I. *Action upon a Policy.*

1. Plaintiff must aver an insurable interest in himself or one for whom he acted. *Freeman vs. Fulton Ins. Co.*, . . . 631
2. How far negligence of plaintiff is a defence on a policy. *Johnson vs. Berkshire Ins. Co.*, . . . 379
3. Evidence—preliminary proofs—waiver of—sufficiency of, a question for the Court. *Commonwealth Ins. Co. vs. Sennett et al.*, . . . 311
4. Where the policy allows insurer the option to rebuild but the municipal authority will not permit it, the insured may recover for his full loss. *Brady vs. N. W. Ins. Co.*, . . . 572

II. *Construction of Clauses in Policies.*

5. Execution clause—what is a levy within the meaning of such clause. *Commonwealth Ins. Co. vs. Berger*, . . . 505
6. Breach of condition against assignment of property insured. *Western Mass. Ins. Co. vs. Riker*, . . . 127
7. Warranty—"free from all liens." *Bidwell vs. North Western Ins. Co.* 59

III. *Mutual Insurance—Premium Notes.*

8. Surrender of policy dissolves the relation of insured as a member of the company, which has no claims upon him except for previous assessments. *Campbell vs. Adams*, . . . 506
9. Note given to mutual insurance company is payable by law at its date, and Statute of Limitations begins to run from then. *Howland vs. Edmonds et al.*, . . . 318
10. Assessments upon premium note should not include former assessments still in force, and as to which the power of the company is expended. *Campbell vs. Adams*, . . . 506
11. Transfer of policy without consent of insurers—liability upon premium note. *Hyatt vs. Wait*, . . . 60
12. Mutual insurance policy—default of cash payment of premium. *Mulrey vs. Shawmut Mutual Ins. Co.*, . . . 182

INTEREST, COMPOUND.

See VENDOR, 6.

INTERNATIONAL LAW.

I. *War—Neutral and Belligerent Rights.*

1. Neutrals have a right to challenge the existence of a blockade *de facto*, and also the authority of the party instituting it. They have a right to enter the ports of a friendly nation for the purposes of com-

INTERNATIONAL LAW.

merce, but are bound to recognise the right of a belligerent engaged in actual war, to use this mode of coercion for subduing the enemy. *Schooner Brilliant et al. vs. United States*, 334

2. To legitimate the capture of a neutral vessel or property on the high seas, a war must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the belligerents to use this mode of coercion against a port, city, or territory in possession of the other. *Id.*

3. War is that state in which a nation prosecutes its right by force; and it is not necessary that both parties should be acknowledged as independent nations or sovereign states, nor that war should be solemnly declared. *Id.*

4. As a civil war is never publicly proclaimed, *eo nomine*, against insurgents, its actual existence is a fact in domestic history which the Courts are bound to notice and know. *Id.*

5. Where the sovereign of a neutral state has acknowledged the existence of a war by his proclamation of neutrality, a citizen of that state is estopped from denying the existence of the war, and the belligerent right of blockade. *Id.*

6. Whether property be liable to capture as "enemies' property" does not in any manner depend on the personal allegiance of the owner. It is the illegal traffic that stamps it as "enemies' property." *Id.*

II. *Foreign Ministers.*

7. The Court being informed by counsel that one of the defendants was an ambassador duly accredited from a foreign Sovereign to the British Court, will dismiss him from the suit; and will not, if he object, oblige him to plead or take part in any proceedings. *Gladstone vs. Musurus Bey*, 176

JOINT DEBTORS.

1. Part payment by one, not in satisfaction of the debt, but for his personal discharge, will not be a discharge as to the others. *Winslow vs. Brown*, 383

2. Where such payment is made in another State, its effect must be determined by the laws of that State. *Id.*

JOINT TRESPASS.

1. May be by persons acting separately and without concert. *Stone vs. Dickinson*, 444

JUDGE OF PROBATE.

1. Has no authority to revoke his own decree. *Pettee vs. Wilmarth*, . 558

JUDGMENT.

See EVIDENCE, 1.

LUNATIC, 1.

MUNICIPAL CORPORATION, 1-3.

STATE, 1.

1. Remedy for irregularity of decision. *Pitt vs. Davison*, 124

2. Against vendor in an executory contract for sale of land, is subject to equitable rights of vendee, and is not a lien against the unpaid purchase-money in his hands until actual notice of the judgment. *Smith vs. Gage*, 438

3. Where the existence of a valid judgment is in issue, any evidence tending to show that it is illegal or void is competent. *Kinsey vs. Ford*, 441

4. Of inferior Court, on points necessary to give it jurisdiction, is final until reversed by direct proceedings for that purpose. *Colton vs. Beardsley*, 560

JUDGMENT.

5. By confession—fraud—informality—requisite form under New York Code. *Miller vs. Earle*, 57; *Neusbaum vs. Keim, et al.*, 59.

6. Equitable restraint of collection of judgment—what is necessary to the exercise of. *Clute vs. Potter*, 187

7. Form of authentication of judgment in another State. *Morris et al. vs. Patchin*, 248

JURY.

See CONSTITUTIONAL LAW, IV.

JUSTICE OF PEACE.

1. Must be *so de jure* as well as *de facto* to justify an arrest by his authority. *Newman vs. Tiernan*, 185

LANDLORD AND TENANT.

I. *Lease.*

See ASSIGNMENT, 1-3.

EJECTMENT, 3.

1. On a letting of house or land there is no implied warranty of its fitness for use—the principle of *caveat emptor* applies. *McGlashan vs. Tallmadge*, 315

2. An under lease, by lessee of his whole term, with right to re-enter, is a sub-lease, not an assignment. *People vs. Robertson*, 700

3. Liability on covenant to repair after conveyance by the landlord and attornment to the purchaser by the tenant. *Mirick vs. Bashford*, . . . 629

II. *Rent.*

4. Tenant is bound by his express covenant to pay rent, though he assign his lease with landlord's consent, unless the latter expressly accept a surrender. *Frank vs. Maguire*, 502

5. Insufficient averment of surrender. *Id.*

6. Tenant cannot refuse to pay rent and at same time retain possession, although the landlord fail in his agreement to improve. *People ex rel. Ward et al. vs. Kelsey*, 631

7. Lessee evicted from part of leased premises is entitled to an apportionment of rent, but not to recover the value of the lease over the rent. *Carter vs. Burr*, 701

LAW REPORTING IN ENGLAND, 501

LEGACY, ALTERNATIVE.

1. If legacy given to A., and in event of his death to B., and A. die in testator's lifetime, the legacy will take effect. *May's Appeal*, 636

LEGISLATURE.

See CONSTITUTIONAL LAW, 19, 29, 36.

NAVIGABLE RIVER, 3.

LETTER.

See EVIDENCE, 4.

1. Proof of mailing letter affords no presumption of its due receipt, but is evidence for the jury as to that fact. *Greenfield Bank vs. Crafts*, . . . 378

LIBEL.

1. Libellous letter not justified by the relation of friend and pastor between the writer and the recipient. *Count Joannes vs. Bennett*, . . . 767

LIMITATION.

See INSURANCE, 9.

MORTGAGE, 8, 17.

TROVER, 3.

1. Mortgage barred by twenty years' adverse possession. *Reynolds vs. Green*, 126
2. Averment that land had not been adversely occupied for such period, defective. *Id.*
3. Note is not barred by lapse of time of limitation, if maker has lived out of the State since it was due. *Lawrence vs. Bassett*, 557

LUNATIC.

1. A judgment recovered on *default*, against a person admitted to have been *non compos mentis* at the time of the proceedings in the case, will be reversed on a writ of error brought by his administrator. *Leach vs. Marsh*, 22
2. Actions brought against persons *non compos* for necessities, *it seems*, constitute an exception; but, in such case, the defendant in error should plead the fact in bar of the suit. *Id.*
3. Contracts not binding in general. *Note to Leach vs. Marsh*, 30
4. Exceptions to the general rule, and proceedings against persons *non compos mentis*. *Id.*

MANDAMUS.

See CONTESTED ELECTIONS, 1-3.

COURTS, 6.

1. In proceedings by *mandamus*, it is not indispensable that the petition should state that the relator is without any other adequate and sufficient remedy. If that appear to the Court to be the fact, the alternative writ will not be quashed. *People ex rel. Fuller vs. Hilliard et al.*, 274

MASTER AND SERVANT.

See NEGLIGENCE, 15.

MECHANICS' LIEN.

1. Identity of building—necessary description. *Kennedy et al. vs. House et al.* 187

MORTGAGE.

See BILLS AND NOTES, 20.

DEED, 2.

EQUITY, 3.

EXECUTION, 2.

I. Of the making and recording of Mortgages.

1. REGISTRATION OF, 1
2. MORTGAGES TO SECURE FUTURE ADVANCES, 1
3. OF THE CHANGE OF THE SECURITY AS AFFECTING THE LIEN, 1
4. Mortgage to secure existing debts, not specifying their amount, is valid against purchasers with notice. *Michigan Ins. Co. vs. Brown*, 571
5. Though mortgage cannot be continued as security for new indebtedness by oral agreement, yet equity will not aid mortgagor to obtain a release from mortgagee. *Joslyn vs. Wyman*, 510
6. Omission of mortgagee's name not cured by delivery to a person to hold as security for money advanced. *Chauncey vs. Arnold*, 317

II. Rights and Duties of Mortgagees.

7. Estate of the mortgagee. *Steel vs. Steel*, 254
8. Title in mortgagee by holding property as absolute owner for twenty years. *Reynolds vs. Green*, 126

MORTGAGE.

9. Mortgagee may have personal action against grantee who assumes to pay it. *Burr vs. Beers*, 318
10. Of land subject to homestead right conveys the reversionary interest of mortgagor though the wife does not join. *Smith vs. Provin*, . . . 378
11. Mortgagee of reversionary interest may maintain a bill to redeem a prior mortgage. *Id.*
12. Estoppel of mortgagee from denial of title. *Brown vs. Combs et al.* 53
13. Right of mortgagee in trust to hold the mortgage for compensation for his "just allowances." *Allen vs. Robbins*, 442
14. Holder of second mortgage may compel holder of first, who has taken possession, to account for all rents, &c., he might have received by due diligence. *Richardson vs. Wallis*, 510
15. Duty of first mortgagee to protect second. *James vs. Brown*, . . . 694

III. *Remedy on Mortgage.*

See LIMITATION, 1.

16. Statutory foreclosure in Michigan. *Lee vs. Mason*, 126
17. Right to foreclose is not lost by the debt becoming barred by lapse of time. *Mich. Ins. Co. vs. Brown*, 571
18. But in such case equity will not make a personal decree against the mortgagor. *Id.*
19. Statute prohibiting actions of ejectment on mortgages is inoperative as to those made prior to its passage. *Blackwood vs. Van Vliet*, . . 571
20. Conveyance subject to usurious mortgage—release of personal liability. *Hartley vs. Harrison et al.*, 57
21. Condition that principal shall become due on default of payment of interest. *Valentine vs. Van Wagner*, 61

IV. *Chattel Mortgages.*

22. Parol evidence of its intention. *McKinster vs. Babcock et al.*, . . . 248
23. Where goods left in hands of mortgagor to sell, the question of good faith is for the jury. *Ford et al. vs. Williams*, 249
24. Interest of mortgagor cannot be levied on unless he has an absolute right of possession for a definite period when the levy is made. *Farrell vs. Hildreth*, 507
25. Mortgagor may redeem at any time before actual foreclosure. *Van Brunt vs. Wakelee*, 570

MUNICIPAL BONDS.

1. Remedy to enforce payment. *People ex rel. Fiedler vs. Mead et al.*, . . 249

MUNICIPAL CORPORATION.

See COURTS, 6.

DRAFT, 4.

EJECTMENT, 1.

NEGLIGENCE, 8-10.

ROADS, 6.

STREETS, 1.

I. *Taxation to pay Debts.*

1. An agreement to levy a *special tax* cannot be implied from an ordinance making it the duty of the City Council "to provide means to meet the payment" of a designated debt when the same may become due. *United States ex rel. Learned vs. Burlington*, 394
2. A City Council has no power to levy taxes not expressly authorized by its charter or the law. Hence, where by the charter of a city it is provided that no greater tax than one per centum shall be levied for any one year, and this maximum rate is actually levied, a mandamus will be refused even to a judgment-creditor to compel the city to levy a greater tax, or even to levy a *specific tax* to pay his judgment. *Id.*

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3. Powers to levy taxes to pay judgments discussed, and herein of special taxes and of the rights of judgment-creditors. *Note to United States vs. Burlington*, 398, and remarks on same case, 498

II. General Duties and Liabilities.

4. Is responsible for damages resulting from the manner of performing a ministerial duty, but not if the duty is of a judicial nature. *Kavanagh vs. Brooklyn*, 630
5. Hence it is not liable for injuries resulting from the improvement of streets. *Id.*
6. Plaintiff may recover for value of work done, although his contract has not been fully performed. *Reed vs. Scituate*, 559
7. Assessments for improvements. *The State vs. Mayor, &c., of Hudson*, 55
8. Duties and liabilities in respect to sewers. *Barton vs. Syracuse*, 314
9. Liability of town under the statutes of Massachusetts for injury to person on the sidewalk. *Day vs. Milford*, 509
10. The grading, paving, &c., of a street by the city is not evidence of a claim of title, but only of a right of way. *Cowenhoven vs. Brooklyn*, 506

MUNICIPAL LIEN.

1. Pennsylvania statute relating to. *Alleghany City's Appeal*, 312

NAVIGABLE RIVER.

See CONSTITUTIONAL LAW, 34.

NUISANCE, 3.

RAILROAD, 6.

1. General power to erect bridges includes power to put piers in the river and protects the company from liability for damages to navigation, unless the right is wantonly or carelessly used. *Clarke vs. Birmingham, &c., Bridge Co.*, 188
2. The remedy for such wanton or careless use of right is through suit by the State, not by a private person. *Id.*
3. A general law that no bridge shall be built so as to hinder navigation, does not take away from a subsequent Legislature the power to grant right to erect such bridges in particular places. *Id.*
4. What are navigable streams and the extent of grant to riparian owners. *Flanagan vs. Philadelphia*, 504
5. Right and control of navigation in. *Id.*
6. Riparian owner on a navigable stream who raises and reclaims the land has a full fee-simple in such land. *People vs. Kelsey*, 631

NEGLIGENCE.

See INSURANCE, 2.

MUNICIPAL CORPORATION, 4, 5, 9.

RAILROAD, 15-17.

1. In an action for negligence plaintiff cannot recover unless he was free from any degree of negligence which contributed directly towards the injury. *Wilds vs. The Hudson River Railroad Co.*, 76
2. Negligence is a question for the jury where the fact is fairly doubtful. In other cases it is a question of law. *Id.*
3. At a railroad crossing it is carelessness in any one approaching with a team, not to stop and listen, before attempting to cross. *Per GOULD, J. Id.*
4. A request on the part of defendant for an instruction to the jury, "That if the negligence of the deceased" (plaintiff) "in any way contributed to cause the collision, which resulted in his death, plaintiff cannot recover," contains a legal proposition, "the true legal rule of the case, and he was entitled to have it given to the jury, substantially as he

NEGLIGENCE.

asked it, without qualification, or to have it plainly refused." Per GOULD, J. *Wilds vs. Hudson River Railroad Co.*, . . . 76

5. The danger at the crossing of a railroad and street at grade is one which travellers are as much bound to guard against as the railway company, and the negligence of the company will not excuse or qualify the duty of watchfulness on the part of the traveller. Per GOULD, J. *Id.*

6. A request on the part of defendant, to charge the jury, that if the deceased was aware of the approach of the train, before he drove upon the track, and voluntarily drove upon it after being so aware of its approach, he cannot recover, should be answered in the affirmative. Per GOULD, J. *Id.*

7. Where the plaintiff's negligence will bar his recovery for damage resulting mainly from negligence of defendant. *Note to Wilds vs. Hudson River Railroad Co.*, . . . 89

8. A., being the owner of real estate situated upon a street in a city, contracted with B. to erect a building thereon, which included an excavation of the sidewalk adjoining. Excavations of a dangerous character were made by the contractor, to which the attention of A. was called by the city. The city knew of the excavation of this and similar areas, and interposed no objection, though no express permission to make this one was given. C. fell into the unprotected area and was injured. He brought an action against the city to recover damages. A. had knowledge of the action, but was not expressly notified to defend it; nor was he informed that the city would look to him for indemnity. A judgment was recovered against the city, which it was compelled to pay. In an action by the city against A., to be reimbursed the amount which it had paid under the judgment, *Held*, assuming that C. was injured through the fault of A., and that the city was not a wrongdoer, A. is concluded by the judgment recovered against the city. No express notice to him of the pendency of the action was necessary. It is enough that he knew it was pending, and could have defended it. *Chicago vs. Robbins*, . . . 529

9. The excavation, though not a nuisance in itself, became such on account of the improper manner in which it was made. The city is not, however, for that reason a wrongdoer, in such a sense as to lose its right of action against A. No license from the city to leave the area open and unguarded can be presumed. *Id.*

10. The defendant was under an obligation to have the work done in such a way as to save the city from damage and the public from harm. He cannot escape liability by letting out the work to a contractor. The work having been done in such a manner as to render the city liable in the first instance, the defendant is answerable to it for the amount which it was compelled to pay. *Id.*

11. The case of *Hilliard vs. Richardson*, 3 Gray 349, distinguished, and the case of *Scammon vs. The City of Chicago*, 25 Illinois 424, so far as it conflicts with these principles, overruled. *Id.*

12. Plaintiff, a carman, was sent to defendants' premises to receive certain goods, which were usually handed to him out of a room or door in a passage. After waiting some time, he inquired of the defendants' gatekeeper for the warehouseman. The gatekeeper directed him to enter at a certain door, and follow the passage in a certain direction, and he would meet the warehouseman. Plaintiff followed the direction, and in going along the passage, which was dark, fell down through the well-hole of a staircase into an underground part of the premises. An action having been brought by plaintiff he was nonsuited, and on a rule to set it aside, it was *held*, that the nonsuit was rightly directed, on the ground that if it was so dark that plaintiff could not see, he ought not to have proceeded without a light; and if it was sufficiently light for him to see, he might have avoided the staircase, which was a very different thing from a hole or a trapdoor down which a man might fall. *Wilkinson vs. Fairrie et al.*, . . . 242

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13. It was not the business of the owners to have the passage lighted and there was no contract or duty on their part that it should be in any other condition than it was. *Wilkinson vs. Fairrie et al.*, . 242
14. Generally speaking, it is the duty of every person to take care of his own safety, so as not to go along a dark passage without a light to tell him where he is going, and what the danger is that he is to expect. *Id.*
15. Where the fence put round certain mill machinery, required by statute to be fenced, had been broken, and the owner having notice of the defect was guilty of negligence in not using reasonable care to have his machinery properly secured, a servant who had entered into his employment when the machinery was fenced, and who continued in the service after knowledge that the fence was gone, in the reasonable expectation, induced by the expressions of the owner and his manager to him, that the defect would be repaired, without negligence on his own part, met with an injury by reason of the machinery being unfenced:—*Held*, that he could maintain an action for the injury against his employer. *Holmes vs. Clarke*, . 107
16. Liability of owner of a building for carelessness of workmen employed in repairing. *Brckett vs. Lubke*, . 63
17. One who is employed to do a piece of work and uses his own workmen and his own discretion, is alone liable for injuries from negligence in the manner of doing it. *O'Rourke vs. Hart*, . 567
18. Where a person is killed by the act of another, under such circumstances that the deceased, had he survived, could have maintained an action for the injury, an action can be maintained under the 9 & 10 Vict. c. 93, ss. 1 and 2, for the benefit of the surviving relatives, in respect of an injury arising from a pecuniary loss occasioned by the death, although the same pecuniary loss would not have resulted to the deceased had he lived. *Pym vs. Great Northern Railway Co.*, . 234
19. The loss of the benefit of a superior education and the enjoyment of greater comforts and conveniences of life, is a pecuniary loss for which the wife and children of the person killed may maintain an action under the statute, where the income of the deceased wholly ceases with his death, or where the premature death prevents the deceased from having made the extra provision for his family which he might be reasonably expected to have made had he lived out his natural life. *Id.*
20. Negligence of person having charge of young child is the same as his own would be if he were an adult. *Wright vs. Malden Railroad Co.*, 379
21. What is *prima facie* evidence of such neglect. *Id.*
22. Of owner of property left by mistake on another's wharf will not justify a sale of the property by wharfinger. *Kusenbury vs. Browne*, 503

NEGOTIABLE BONDS.

1. Without statutory provision, no action can be maintained in the name of an assignee, upon interest coupons, which contain no negotiable words, nor language from which it can be inferred, that it was the design of the corporation issuing them, to treat them as negotiable paper, or as creating an obligation distinct from the bonds to which they were severally attached when the bonds were issued. *Jackson vs. The Y. & C. Railroad Co.* . 585
2. The negotiability of such coupons is a question of law, to be determined, from the papers themselves, and proof of custom, as to the negotiability of them, is inadmissible. *Id.*
3. The bonds being specialties, the remedy for breaches thereof, is by an action of debt or of covenant; not being *legally* assignable, no action is maintainable in the name of the holder, though he be assignee. *Id.*
4. It is indispensable that the cause of action exist at the time the action was commenced. The statute of Maine of 1856, c. 248, does not remedy this defect. *Id.*

NEGOTIABLE INSTRUMENTS.

1. What may be considered such, and particularly of negotiable bonds.
Note to Jackson vs. Y. & C. Railroad Co. 595; and *Supplementary Note*, 748.

NEPHEWS.

1. Devise to "all my nephews," &c., does not include nephews of testatrix's husband. *Paul's Estate*, 447

NOTICE.

See JUDGMENT, 2.

NUISANCE.

1. Where a lawful business is carried on at unseasonable hours, it becomes a nuisance, and equity will interfere by injunction to restrain it. *Dennis vs. Echardt*, 166
2. On a highway, cannot be abated by a private individual unless it does him special injury. *Harrower et al. vs. Ritson et al.* 315
3. Erection of a pier in navigable river without legal authority will be a nuisance *per se*, which will be enjoined, and no evidence will be received to show that it will do no harm. *People vs. Vanderbilt*, 632
4. Notice to remove before action brought. *Caldwell vs. Gale*, 697
5. The fact that other causes have helped render a well impure, is no defence to action for injury to it by the escape of gas into it, but may affect the amount of damages. *Sherman vs. Fall River Iron Works Co.*, 768

OFFICER.

See BILLS, 2.

DEED, 1.

PUBLIC OFFICER.

PARDON.

1. A pardon is an act of mere grace, and is not founded on any preliminary steps that furnish legal merits or a legal title. *Commonwealth ex rel. Crosse vs. Holloway*, 474
2. The intention of the Executive to grant a pardon can have no legal force until carried into completed act. The completed act is the charter of pardon delivered. *Id.*
3. By usage in Pennsylvania, the delivery of a pardon to the warden of a prison is *prima facie* equivalent to delivery, or is a constructive delivery to the prisoner, but it is open to be proved no delivery by showing circumstances that are inconsistent with the intention to deliver it. *Id.*
4. A pardon procured by false and forged representations and papers is void. *Id.*
5. Therefore, in a case where on the faith of a forged letter from the War Department, asking for a pardon, and stating that the prisoner was wanted for secret public service, a pardon was executed by the Governor and put into the hands of the United States Marshal, to be delivered to the prisoner on his performance of the service, and by the marshal delivered to the warden of the prison in order to obtain the release of the prisoner, *Held*, that this was not a delivery to the prisoner, notwithstanding the custom in Pennsylvania to deliver pardons to the warden of the prison to keep as his voucher. *Id.*
6. Even had this been a delivery, the fraud in obtaining the pardon would have avoided it, although it was not shown that the prisoner had any hand in perpetrating the fraud. *Id.*
7. Whether the statute 27 Edw. 3, c. 2, is in force in Pennsylvania, *quære?* *Id.*
8. What is a pardon—who may pardon—what may be pardoned—conditional pardons—void pardons—how taken advantage of—effect of. *Note to Commonwealth ex rel. Crosse vs. Holloway*, 486

PARDON.

9. Pardon pleaded before sentence discharges defendant from liability for costs. *Commonwealth vs. Ahl*, 633

PARENT AND CHILD.

1. The rule that there is no implied contract for compensation between parent and child, on the one part for maintenance and education and on the other for services, applies also between a child and a person assuming the relation of parent to it. *Duffy et al. vs. Duffy*, 434
2. Though the father is bound to maintain his child, yet if the latter is taken and maintained by a relative without the father's previous request, though with his assent, there is no implied contract by the father to reimburse the relative for his expenses on the child's account. *Id.*
3. Suit by parent for child's earnings—emancipation. *Brown vs. Ramsay*, 56
4. Emancipation is revocable under certain circumstances. *Abbott vs. Converse*, 380

PARTNERSHIP.

See SET-OFF, 2.
TRUSTS, 5.

1. A partner has power to compromise and discharge a claim of the partnership against a third party. *Noyes vs. The New Haven Railroad Co.*, 347
2. And a payment to a partner is a good payment to the firm, although the other partner or partners had given notice to the debtor not to pay to such partner. *Id.*
3. Whether the power of a partner to bind the partnership by an executory contract, would not be affected by a notice from the other partners revoking his authority: *Quere. Id.*
4. Authority of partner to settle the affairs of the concern after dissolution remains the same as it was before. *Robbins et al. vs. Fuller*, . . . 185
5. What may be held proof of partnership as to third parties. *Drennen et al. vs. House et al.*, 187
6. Not liable for money borrowed by individual partner. *Donnelly vs. Ryan*, 315
7. Guarantee of private debt of one partner in contemplation of insolvency cannot be proved against the joint estate by a creditor who knew the firm to be insolvent. *Phillips vs. Ames et al.* 698
8. Where one permits another to buy stock on joint account in anticipation of partnership and immediately after repudiates the agreement, he is not entitled to any of the property bought, nor are his creditors. *Rice vs. Shuman*, 635
9. Requisitions of the statutes in regard to limited partnership must be strictly complied with. *Pierce vs. Bryant et al.* 508
10. Creditor need not prove special loss from want of such compliance. *Id.*

PARTY-WALL.

1. Right to lateral support from an ancient party-wall. *Phillips vs. Bordman*, 64

PATENT.

1. At common law an inventor has no exclusive right to his invention. Such right is the creature of the statute, by which alone the right claimed in any given case must be determined. *Morton vs. New York Eye Infirmary*, 672
2. In its strict sense a discovery is not patentable. *Id.*
3. The discovery of the use of ether in surgical operations, though of inestimable benefit to the human race, was merely the discovery of a more perfect effect of the action of well-known agents, operating by

PATENT.

- well-known means upon well-known subjects, and as such was not legally entitled to be patented. *Morton vs. New York Eye Infirmary*, . . . 672
4. Sale of worthless patent not a sufficient consideration for promissory note. *Lester vs. Palmer*, . . . 62

PERSONAL PROPERTY.

1. Power of Legislature to declare what shall be held to be personalty. *Maus vs. Logansport &c., Railroad Co.* . . . 118
2. Chattel interests in land should be sold as personal property. *Buhl vs. Kenyon*, . . . 570

PHYSICIANS AND SURGEONS.

1. Physicians and surgeons who offer themselves to the public as practitioners, impliedly promise thereby, that they possess the requisite knowledge and skill to enable them to treat such cases as they undertake with reasonable success. *Patten vs. Wiggin*, . . . 401
2. This rule does not require the possession of the highest, or even the average, skill, knowledge, or experience, but only such as will enable them to treat the case understandingly and safely. *Id.*
3. The law also implies that in the treatment of all cases which they undertake, they will exercise reasonable and ordinary care and diligence. *Id.*
4. They are also bound always to use their best skill and judgment in determining the nature of the malady and the best mode of treatment, and in all respects to do their best to secure a perfect restoration of their patients to health and soundness. *Id.*
5. But physicians and surgeons do not impliedly warrant the recovery of their patients, and are not liable on account of any failure in that respect, unless through some default of their own duty, as already defined. *Id.*
6. If the settled practice and law of the profession allows of but one course of treatment in the case, then any departure from such course might properly be regarded as the result of want of knowledge, skill, experience, or attention. *Id.*
7. If there are different schools of practice, all that any physician or surgeon undertakes is, that he understands, and will faithfully treat the case according to, the recognised law and rules of *his* particular school. *Id.*
8. Distinction between physicians and surgeons. *Note to Patten vs. Wiggin*, . . . 405
9. Right to sue for compensation for services—liability for malpractice—knowledge and skill required of them. *Id.*

PLANK ROADS.

1. Liability of subscribers under the New York Act. *Poughkeepsie, &c., Plankroad Co. vs. Griffin*, . . . 121

PLEADING.

1. THE TRAVERSE DE INJURIA, . . . 577
2. Defective averment of compromise. *Dolcher et ux. vs. Fry*, . . . 125

POORHOUSE.

1. Not taxable for school purposes in Pennsylvania. *Directors of Poor vs. School Directors*, . . . 448

POWER.

1. Of sale in mortgage must be strictly complied with. *Smith vs. Provin*, . . . 378

PRECEDENT.

1. A Court is not bound to follow the decisions of Courts of other States as precedents. *Caldwell vs. Gale*, 697

PRIVILEGED COMMUNICATION.

1. Conversation between attorney and client after the relation has ceased and on subjects not connected with the one on which the attorney was employed, is not privileged. *Mandeville vs. Guernsey*, 630
2. Owner of building set on fire may caution his employees against the suspected incendiary. *Lawler vs. Earle*, 445

PUBLIC OFFICER.

See BONDS, 1.

1. Not liable where property attached by him is stolen, if he has taken due care. *Dorman vs. Kane*, 444
2. An officer of customs who finds smuggled goods cannot maintain an action for a reward offered by the owners of the vessel for such discovery. *Davies vs. Burns*, 768
3. Evidence in actions against. *Colton vs. Beardsley*, 560

PUBLIC WORKS.

See CONTRACTOR, 1-2.

PURCHASER.

See DAMAGES, 1.

1. Execution-creditor not a *purchaser* until he buys in the property. *Columbia Bank vs. Jacobs*, 126

RAILROAD.

See NEGLIGENCE, 3-6, 18-19.

I. *Of the Charter.*

1. Forfeiture of charter for non-user of road—mode of enforcing the penalty in New York. *People vs. Albany and Vermont Railroad Co.*, 121
2. The obtaining of a charter does not impose any positive obligation to build a road or to complete the entire route. *People vs. Albany and Vermont Railroad Co.*, 246
3. The right of abandonment is somewhat different. *Id.*
4. Remedy to prevent abandonment. *Id.*
5. A charter fixing the terminus of a road at or near a certain point gives the company a large discretion, which will only be interfered with where it has clearly exceeded its limits or acted in bad faith. *Fall River Iron Works Co. vs. Old Colony, &c., Railroad Co.*, 699
6. Unrestricted grant of authority to build a railroad carries with it the right to cross a navigable stream. *Id.*

II. *General Rights and Duties.*

7. Title of railroad company to the track—powers of Legislature over it—when track may be taken for a highway. *Albany Northern Railroad Co. vs. Brownell et al.*, 58
8. Liability of track to be sold for taxes where by law it is personal property. *Maus vs. Logansport, &c., Railroad Co.*, 118
9. In cities—may act under authority of the Legislature irrespective of municipal control. *People et al. vs. Kerr et al.*, 377
10. Under the New York statute railroad companies must not only erect but maintain fences, &c. *McDowell vs. New York Central Railroad Co.*, 186
11. Change of cars—duties of company and of passengers—evidence of regulations of the company. *Barker et al. vs. New York Central Railroad Co.* 122

RAILROAD.

III. *Liabilities.*

12. Liable on contract to deliver goods at a certain point on a connecting road, though such point be beyond the line of the road and outside of the State. *Burtis vs. Buffalo, &c., Railroad Co.*, . . . 184
13. Such liability exists at common law as well as by statute. *Id.*
14. Liability as warehousemen or common carriers—course of business on roads along same route. *Judson vs. Western Railroad Co.*, . . . 380
15. Liability to gratuitous passenger for negligence. *Wells vs. New York Central Railroad Co.*, . . . 122
16. Liability for damages to gratuitous passenger. *Perkins vs. New York Central Railroad Co.*, . . . 318
17. Who are not considered free passengers. *Smith vs. New York Central Railroad Co.*, . . . 319

REAL ESTATE.

See DAMAGES, 1.

1. To convert land into money under a will, the direction to sell must be imperative. *Anewalt's Appeal*, . . . 505

RECEIPT.

1. A mere receipt not a contract of sale. *Filkins vs. Whyland*, . . . 317

RECOGNISANCE.

1. Recognisance to appear and "not depart without leave of the Court" is forfeited if prisoner appears and enters on his trial, but departs before it is finished. *People vs. McCoy*, . . . 702

RELIGIOUS SOCIETIES.

1. Right of government in—title to property of a divided congregation. *McGinnis et al. vs. Watson et al.*, . . . 251
2. A majority of a congregation must govern, but consistently with the laws of the denomination. *Sutter et al. vs. Trustees*, . . . 505
3. Congregation joining another with an established form of government is bound by the rules of the latter, and cannot secede by a majority vote of its own members. *Id.*

REPLEVIN.

1. *Bonâ fide* purchaser—demand. *Trud vs. Anderson*, . . . 126

RESIDENCE.

See CONSTITUTIONAL LAW, 22.

ROADS.

1. Where the public acquire a right of way over a race previously dug by the owner of the land, the burden of building and maintaining such a bridge as is necessary for the highway, rests upon the public. *Phoenixville vs. Phoenix Iron Co.*, . . . 307
2. On the other hand, where the owner of the land, for his own purposes, digs a race across an existing highway, he is bound to build and keep in repair such bridge as is necessary for the highway. *Id.*
3. His obligation is proportioned to the public right at the time. If the public subsequently acquire greater rights, his obligation is not increased. *Id.*
4. Therefore, in a case where a bridge built by defendants' vendor had been carried away and a new one built wider and higher, to correspond with a new road laid out by order of Court on the site of the old one, it was *held*, that defendants were not liable for repairs to this new bridge. *Id.*

ROADS.

5. Private person cannot remove a fence which encroaches upon a highway, unless it obstructs the use of the road by the public. *Harrower et al. vs. Ritson et al.*, 315
6. Legislature has unlimited power over public rights in highways, including streets in a city. *People vs. Kerr et al.*, 377
7. Act of New York authorizing the making of highway over railroad tracks without compensation. *Albany Northern Railroad Co. vs. Brownell et al.*, 58
8. How a road may become a legal highway in New York. *Trustees, &c., of Jordan vs. Otis*, 123
9. How and through what land it may be made under the New York statute. *People ex rel. Williams vs. Kingman et al.*, 183
10. Who are authorized by law in Massachusetts to accept a road in a town. *Reed vs. Scituate*, 559

SALE.

1. No one without express authority of law can purchase what it is his duty to sell for the best price it will bring. *Ames vs. Port Huron Log-Driving Co.*, 570

SAVINGS BANK.

See CONSTITUTIONAL LAW, 36.

1. Action against for deposits—setting up title in third person. *Lund vs. Seamen's Bank, &c.*, 125

SECURITY.

1. Collateral, is lost by giving up possession to owner, even with restrictions as to use. *Walker vs. Staples*, 444

SEDUCTION.

1. Previous seduction of the woman is no defence in action for. *People vs. Millspaugh*, 697

SELECTMEN.

1. Authority of. *Holcomb vs. Moore*, 380

SET-OFF.

See CONTRACT, 2.

PARTNERSHIP, 7.

1. A note of plaintiff's due and held by defendant before the suit, is proper subject of set-off, though plaintiff had no notice of it before his action. *Cook vs. Mills*, 443
2. Damages for breach of a partnership contract cannot be set off against one partner in a suit on an individual contract of his own. *Jackson et al. vs. Clymer*, 635

SEWERS.

See MUNICIPAL CORPORATIONS, 8.

SHERIFF.

See PUBLIC OFFICER, 1.

1. When a sheriff takes goods in execution or by attachment, or in an action where the plaintiff seeks to recover possession of them, he becomes a bailee for the benefit of all parties interested. *Moore vs. Westervelt*, 683
2. In such case his duties are analogous to those of a bailee where the bailment is beneficial to both parties, as in case of hiring, and he is responsible only for such loss or damage to the goods as results from his want of ordinary care. *Id.*

SHERIFF.

3. Liability for acts of his deputy—proof of deputy's authority in action against sheriff. *Curtis vs. Fay*, 62
4. Neglect to arrest a debtor is such a wrong to the interests of creditor as is assignable, and will survive to his executors—but sheriff in mitigation of damages may show the circumstances and condition of the debtor. *Divinney vs. Fay*, 560
5. Sheriff neglecting to collect and return an execution is liable to plaintiff for the amount of the execution, unless he show that defendant had no property out of which he could have collected the debt. *Bowman vs. Cornell*, 702

SHERIFF'S DEED.

1. Need not recite the particular execution under which he sold the land conveyed. *Smith vs. Gage*, 438

SHERIFF'S SALE.

1. Owner of goods taken on execution against another person may forbid sale, and afterwards buy in the goods without impairing his right of action for the trespass. *Ford et al. vs. Williams*, 249

SHIPPING.

See COMMON CARRIER, 1-5.

I. *Rights and Liabilities of Owner of Vessel.*

1. Mastic shipped in bulk for California, on the voyage melted, as it was naturally liable to do when exposed to great heat, and occasioned serious injury to other parts of the cargo. The shippers of the latter recovered damages against the owners of the vessel, in actions on bills of lading signed by the master, who had been appointed by the owners of the vessel. The dangerous character of mastic was not known to either party at the time of its shipment, and had in fact been frequently shipped on shorter voyages without injurious consequences. *Held*, that the owners of the vessel were entitled to recover on a libel in admiralty against the charterers, the amount of damages which they had been obliged to pay. *Pierce vs. Winsor*, 139
2. Liability of shipowner for damages to cargo by shipment of dangerous articles, discussed. *Note to Pierce vs. Winsor*, 145
3. The owner of a vessel is entitled to recover against the charterer for unreasonable delay in unloading, by which such owner has been unjustly deprived of the use of his vessel. *Gross et al. vs. Beard*, 548
4. It is usual in charter-parties to insert an agreement for a specified time for loading and unloading. And where the contract is precise, the shipper of the freight is held strictly to its terms. *Id.*
5. But where no period of delay is fixed by the contract, the rule is different. There a reasonable time is implied, which is a question for a jury. *Id.*
6. Charter-party—deviation from voyage. *Baker vs. Pratt*, 63

II. *Of the Master.*

7. Master is bound to deliver the kind of goods and the quantity specified in the bill, and acceptance by consignee of goods of the kind but less in quantity does not change the master's obligation. *Byrne vs. Weeks*, 568

III. *Of the Lien for Supplies.*

8. The vessel lien law of New Jersey applies as well to foreign as to domestic vessels. *Randall vs. Roche*, 553
9. A lien for supplies furnished to a foreign vessel, on the credit of the owner or the master, does not create a maritime lien on the vessel, within the jurisdiction of the United States Courts of Admiralty, and may be enforced in the Courts of this State. *Id.*

SHIPPING.

10. Assignee of vessel as collateral security not liable for supplies—proof of nature of the assignment. *Blanchard vs. Fearing*, . . . 63

SLANDER.

1. Burden of proof is on plaintiff to prove the words spoken within two years. *Pond vs. Gibson*, 446

STAMP.

1. An agreement for the hire by defendant from plaintiffs of a pair of carriage-horses for twelve months, the defendant to give three months' notice previous to the expiration of the year of her intention to give up the horses, was prepared in duplicate, and one part signed by plaintiffs was sent by them to defendant by her servant, and the other part signed by defendant was retained by plaintiffs. Defendant having given up the horses without notice, plaintiffs brought an action against her on the agreement. Having lost their part, plaintiffs gave notice to defendant to produce her part of the agreement at the trial, which was not complied with, nor was any evidence given as to where it was. It being proved that it was not stamped when sent by plaintiffs to defendant, WILDE, B., refused to admit secondary evidence of its contents; whereupon plaintiffs proceeded to give evidence of a custom in the trade that it was usual for the hirer, under such circumstances, to give a three months' notice. The jury, however, negatived the existence of such a custom, and found a verdict for defendant: *Held*, that WILDE, B., was right in rejecting secondary evidence of the contents of the document; and that, as it was proved to have been unstamped at the time it was sent by plaintiffs to defendant, the proper presumption was that it remained still unstamped; and the fact of the defendant's not producing it at the trial after notice so to do, afforded, under the circumstances, no ground for the presumption that it had been subsequently stamped. *Arbon vs. Fussell*, . . . 99
2. The evidence as to the custom of the trade was beside the point which the jury had to determine, and when it was found that the document bore no stamp, the plaintiffs should have been nonsuited. *Id.*
3. Lost instruments—presumptions as to stamps—introduction of secondary evidence of contents. *Note to Arbon vs. Fussell*, . . . 106

STATE.

1. The judgment of a board of officers having legal authority to pass on claims will be conclusive in actions in another State. *Michigan vs. Phoenix Bank*, 565

STATE COURTS.

- See COURTS, II.
DRAFT, 2.

STATUTES.

- See COURTS, 15.
1. Distinction between directory and imperative provisions discussed. *Note to Stevenson vs. Lawrence*, 417
 2. Distinction drawn between acts to be done by a court and by a party. *Id.*

STATUTE OF FRAUDS.

- See CONTRACT, 4.
1. Delivery and acceptance can only be shown by unequivocal act. *Denny vs. Williams*, 445
 2. If evidence is too slight to justify a verdict, the judge should withdraw the case from the jury. *Id.*

STATUTE OF FRAUDS.

3. Promise to pay debt of another must be in writing which shows the terms of the contract, without resort to parol evidence. *Hall vs. Soule*, 695

4. Parol promise is not a legal consideration for subsequent one in writing. *Id.*

STREAM.

1. Owner of land on a natural stream has a right to reasonable use of water without regard to the effect on lower owners. *Springfield vs. Harris*, 380

STREETS.

See MUNICIPAL CORPORATIONS, 5, 10.

ROADS, 6.

1. The fee of streets in a city resides in the city corporation in trust. *People et al. vs. Kerr et al.*, 377

SUBTERRANEAN WATERS, 65

SUIT.

1. Action against a foreign corporation under New York Code is a "suit." *Note to Barney vs. Globe Bank*, 221

SUNDAY.

1. Contract for advertisement in Sunday newspaper void. *Smith et al. vs. Wilcox et al.*, 59

2. An act done on Sunday, but not in the ordinary calling of the parties, not void under the statute of Rhode Island. *Allen vs. Gardiner*, 442

SURETY.

See EXECUTOR, 1.

1. Where a party executes a bond as surety with another, whose name appears to the bond, but which name has been forged, he will not be liable. *Seely vs. The People*, 344

2. Surety has the same equitable defence against an assignee for benefit of creditors as he has against the assignor. *Reed vs. Sands*, 185

3. Variation of contract without his knowledge releases him. *Bagley vs. Clark*, 567

SURVIVING RELATIVE, ACTION BY.

See NEGLIGENCE, 18, 19.

TAX.

See MUNICIPAL CORPORATIONS, 1-3, 7.

POORHOUSE, 1.

1. License fee for selling in market is not a tax. *Ash vs. People*, 696

TAX WARRANT.

1. Insertion of an improper item makes the warrant void only for the excess. *Colton vs. Beardsley*, 560

TENANT IN COMMON.

See EASEMENT, 3

TRESPASS, 1.

TIME.

See COURTS, 15.

TORT.

See ASSUMPSIT, 2.

1. In action for tort after failure of proof that the taking was wrongful, plaintiff should be nonsuited—he cannot amend by changing the action to *assumpsit*. *Ransom vs. Wetmore*, 765

TOWN.

See MUNICIPAL CORPORATION.

TRESPASS.

1. Cannot be maintained by tenant in common against his co-tenant, unless in case of unequivocal ouster. *Filbert vs. Hoff*, 502
2. Will lie for erection of a bay-window over land of adjoining owner, although it is used as a highway. *Codman et al. vs. Evans*, 699
3. In action for trespass on land plaintiff must show actual possession in himself or a judgment awarding it to him. *Cowenhoven vs. Brooklyn*, 506

TRIAL.

See STATUTE OF FRAUDS, 2.

1. Where a judge, at the circuit, on *ex parte* application, irregularly refers a cause to a referee to try the whole issue, and the party who has a right to object proceeds with the trial of the action, produces evidence, and submits the case to the referee without objection, the question of the irregularity of the reference cannot be raised upon an appeal. *Claftin vs. Farmers', &c., Bank*, 92
2. Judge at trial may state to the jury his recollection of what has been testified to. *Eddy vs. Gray*, 253
3. Judge may inquire of jury the ground of their verdict. *Lawler vs. Earle*, 445
4. Answer of Court to prayer for instruction to the jury. *Schilling vs. Durst*, 447
5. It was error to allow counsel to read books of reports to the jury and comment upon them. *Phoenix Ins. Co. vs. Allen*, 697
6. Charge to jury as to effect of verdict. *Waffle vs. Dillenbeck*, 765

TROVER.

See CONFLICT OF LAWS, 2.

1. For one of four billiard-tables sustained, though the particular one to which plaintiff had title was not proved. *Clark vs. Griffith et al.*, 119
2. Lies for goods stolen, after the prosecution for larceny but independently of it. *Hutchinson vs. Merchants' and Mechanics' Bank*, 188
3. The Statute of Limitations does not begin to run against plaintiff in trover till the termination of the prosecution. *Id.*

TRUSTS AND TRUSTEES.

1. SALES AND TITLES UNDER DEEDS OF TRUST, 641, 705
2. One *sui juris* cannot, as against creditors, settle his property in trust for his own use for life and over to his appointees by will. *Mackason's Appeal*, 504
3. Devise in trust for support of school of certain kind held valid. *Tainter et al. vs. Clark*, 508
4. Does not become extinguished by failure of trustee to accomplish its purpose. *Id.*
5. What may be considered income and what principal where a special partnership of testator is continued by trustees. *Kinmouth vs. Brigham et al.*, 698
6. Presumption of conveyance and surrender to *cestui que trust*. *Brown vs. Combs et al.*, 53
7. Commissions and expenses. *Wetmore vs. Brown et al.*, 125
8. Actions between trustee and *cestui que trust*. *Id.*

UNITED STATES LOANS AND STOCKS.

See CONSTITUTIONAL LAW, II.

USURY.

1. Conveyance of land subject to usurious mortgage. *Hartley vs. Harrison et al.*, 57
2. If note is purchased for less than its face from an agent of the maker it will be usurious, though the purchaser does not know that the seller is acting only as agent. *Sylvester vs. Swan*, 557
3. Is a personal defence. *Sellers vs. Botsford*, 570

VENDOR AND VENDEE.

See CONTRACT, 1.

JUDGMENT, 2

I. Of Real Estate.

1. Deed—Escrow—Death of Vendor. *Teneick vs. Flagg*, 52
2. Nature of their respective interests after entry of vendee on land under contract for purchase. *Smith vs. Gage*, 438
3. Vendee's possession under such contract is notice to all persons of his rights under the contract. *Id.*
4. Of land under executory contract—stipulation to "improve the premises," is void for indefiniteness. *Morris vs. Hoyt*, 569
5. Evidence of intention of vendor to rescind. *Id.*
6. When vendee in default asks specific performance in payment of instalments, compound interest will be required. *Id.*

II. Of Personalty.

7. Sale—fraud—purchase with design not to pay. *Hennequin et al. vs. Naylor*, 58
8. Rescission of sale—vendee becoming insolvent placed goods in warehouse subject to vendor's order and notified him—vendor's assent subsequently related back to that time and made his title good against intermediate attaching creditor. *Sturtevant vs. Orser et al.* 318
9. Misrepresentations in conditions of sale. *Allen vs. Robbins*, 442
10. If purchaser expressly relies on assertion of seller as to value, he may have action for fraudulent representations, whether the contract is in writing or not. *Picard vs. McCormick*, 695
11. Bill of sale will not exclude parol evidence. *Id.*
12. In action for deceit in sale of property, other representations made by defendant at the same time as those set forth in the declaration are admissible in evidence. *Pedrick vs. Porter*, 767
13. But an action will not lie for false representations as to future profits that may be made. *Id.*

VOLUNTARY CONVEYANCE.

See TRUST, 2.

WARRANTY.

See INSURANCE, 7.

1. Cardinal rule in construction of, is "to read the writing." *Deblois vs. Earle*, 441
2. Assignor of a note and collateral security, with warranty of collection, not liable until failure of assignee to recover on both note and collateral. *Barman vs. Carhartt*, 127
3. Guaranty of collection of a note implies that it is collectable by due course of law. *Cady et al. vs. Sheldon et al.*, 439
4. Resort to legal proceedings is not indispensable if it appears that they would be ineffectual. *Id.*

WAY.

See ROADS.

1. Right to erect gates. *Stevens vs. Allen*, 55
2. Presumption of grant from user. *Pierce vs. Cloud*, 446

WHARFINGER.

1. Has no power to sell goods deposited on his wharf, for unpaid wharfage. *Kusenburt vs. Browne*, 503

WILD ANIMALS.

1. Keeper is bound to exercise such care as will prevent injuries to other persons through such vicious acts as the animals are naturally inclined to commit. *Scribner vs. Kelly*, 559

WILL.

See DECEDENTS' ESTATES, 2-3.

1. Need not be read to or by the testator. *Hess's Appeal*, 638
2. A mark is a signing of the name within the meaning of the statute. *Morris et al. vs. Kniffin*, 316
3. Undue influence over testator—presumption from unlawful relations of parties. *Dean et ux. vs. Negley et al.* 252
4. Evidence—exemplification under New York statutes. *Hill et al. vs. Crockford*, 58
5. Acceptance of a devise subject to an annuity creates a personal liability for the annuity. *Gridley vs. Gridley*, 121
6. Sale directed by, "so that it be within one year," is valid if made afterwards. *Shalter & Ebling's Appeal*, 634
7. Devise to one by name given to another by description. *Wagner's Appeal*, 634
8. Bequest of money, "both principal and interest (if she needs it) during her lifetime." *Paul's Estate*, 447

WITNESS.

See EVIDENCE, 2.

1. Privilege to decline answering—right of parties to object to question to witness. *Newcomb vs. Griswold*, 57
2. Impeaching or sustaining witness—what knowledge he must have to make him competent to testify concerning other witnesses' character. *Curtis vs. Fay*, 62
3. Opinions of witnesses, to be competent evidence, must be such as amount in some degree to knowledge of existing facts. *Harpending vs. Shoemaker*, 248
4. Interest, to disqualify, must be direct, certain, and immediate, in the result of the suit. *Scull vs. Mason et al.* 635
5. Vendor who had no title is not competent witness for vendee in action by the real owner. *Kusenburt vs. Browne*, 503